

Message Text

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INFO OCT-01 ISO-00 /004 R

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APPROVED BY: L-MONROE LEIGH

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P 250024Z OCT 75

FM SECSTATE WASHDC

TO ALL DIPLOMATIC POSTS PRIORITY

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FOLLOWING REPEAT STATE 252910 ACTION USUN INFO

OECD PARIS DTD 23 OCT

QTE

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E.O. 11652: N/A

TAGS: EINV, UN

SUBJECT: 30TH UNGA, AGENDA ITEM 12 - TRANSNATIONAL CORPORATIONS

REF: (A) USUN 5107; (B) USUN 5170; (C) USUN 5180; (D) STATE 238248; (E) STATE 247245

1. WHILE COMPROMISE RESOLUTION (REF C) IS SIGNIFICANT IMPROVEMENT OVER PREVIOUS IRANIAN AND LIBYAN DRAFTS, CERTAIN PROBLEMS, SEVERAL OF THEM VERY IMPORTANT, REMAIN. US DEL SHOULD SEEK TO OBTAIN FOLLOWING CHANGES IN COMPROMISE DRAFT. YOU SHOULD SEEK TO ENLIST WEO SUPPORT IN NEGOTIATIONS FOR THESE CHANGES.

2. IN TITLE, PREAMBULAR PARA. 1, AND OPERATIVE PARA. 6,
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USDEL SHOULD PRESS VERY STRONGLY FOR ADDING "AND GOVERNMENT

OFFICIALS" AFTER "INTERMEDIARIES" (AFTER "TNCS" IN OPER.
PARA. 6) (JUSTIFICATION IS IN PARA. 1, REF D). AS
FALL-BACK POSITION, USDEL MAY AGREE TO "CONCERNED BY CORRUPT
PRACTICES INVOLVING CERTAIN TRANSNATIONAL AND OTHER CORPO-
RATIONS AND OTHER PERSONS." THIS CHANGE AVOIDS ATTRIBU-
TION OF SOLE GUILT TO THE CORPORATION.

3. PREAMBULAR PARA. 4: CHANGE "RE-AFFIRMING" TO

"RECALLING." WE VOTED AGAINST CERDS AND THEREFORE CANNOT
REAFFIRM ITS PROVISIONS HERE.

4. FOR REASON CITED PARA 2 ABOVE, CHANGE OPERATIVE PARA. 1
TO "CONDEMNS IN THE MOST EMPHATIC TERMS CORRUPT PRACTICES,
INCLUDING THE PAYMENT OF BRIBES BY TRANSNATIONAL AND OTHER
CORPORATIONS AND THEIR INTERMEDIARIES, AND THE SOLICITATION
OF BRIBES BY GOVERNMENT OFFICIALS, IN VIOLATION OF THE LAWS,
REGULATIONS AND MORAL VALUES OF THE HOST COUNTRIES."

5. IN OPERATIVE PARA 2, DELETE "IN ACCORDANCE WITH ITS
NATIONAL LAWS AND REGULATIONS" IN ORDER TO AVOID THE CALVO
DOCTRINE ISSUE. OTHERWISE WE WILL HAVE TO INSIST ON
REFERENCE TO INTERNATIONAL LAW. ALSO SUBSTITUTE "TO

PREVENT BRIBERY AND OTHER CORRUPT PRACTICES" FOR "AGAINST
TRANSNATIONAL AND OTHER CORPORATIONS AND THEIR INTERMEDIARIES
FOR SUCH CORRUPT PRACTICES," IN ORDER TO AVOID THE QUES-
TION OF GOVERNMENT OFFICIALS.

6. WE WOULD PREFER TO DELETE PARAS 3 AND 5 ON THE GROUNDS
THAT THE GA SHOULD NOT PREJUDGE THE WORK OF THE
PERMANENT COMMISSION AS TO WHAT MEASURES WOULD BE MOST
EFFECTIVE TO DEAL WITH THESE IMPROPER PRACTICES AND
PARTICULARLY WHAT THE RESPECTIVE CONTRIBUTIONS OF HOME AND
HOST COUNTRIES SHOULD BE. IF LDCS PERSIST, YOU SHOULD
ATTEMPT TO SEEK AGREEMENT BY SUBSTITUTING FOR PRESENT
PARAS 3 AND 5 A NEW PARA TO THE EFFECT THAT HOST
GOVERNMENTS SHOULD ESTABLISH AND ENFORCE CLEAR STANDARDS
AND APPROPRIATE, SPECIFIC PENALTIES RELATIVE TO THE
MAKING OR SOLICITATION OF ILLICIT PAYMENTS AND THAT
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HOME GOVERNMENTS SHOULD PROVIDE ALL APPROPRIATE COOPERATION
TO HOST GOVERNMENT EFFORTS TO ENFORCE IN THEIR TERRITORIES
LAWS RELATED TO SUCH PAYMENTS. AS A FALLBACK, AND MUCH
LESS PREFERABLE, POSITION WE COULD ACCEPT A COMBINATION OF
PRESENT PARAS 3 AND 5 AS FOLLOWS:

"CALLS UPON HOME AND HOST GOVERNMENTS TO TAKE ALL NECESSARY
AND APPROPRIATE ACTIONS TO PREVENT SUCH CORRUPT PRACTICES,
INCLUDING LEGISLATIVE MEASURES ESTABLISHING CLEAR STANDARDS

AND SPECIFIC PENALTIES RELATING TO THE MAKING OR
SOLICITATION OF ILLICIT PAYMENTS, AND PROVIDING FOR DIS-
CLOSURE WHERE APPROPRIATE, AND TO TAKE CONSEQUENT MEASURES
AGAINST THE VIOLATORS."

7. IT IS UNFORTUNATE THAT CHANGES IN U.S.-PROPOSED DRAFT
RESOLUTION CALLED FOR IN REF E COULD NOT BE INCORPORATED
PRIOR TO TABLING, AS THIS MAY TEND TO UNDERMINE OUR POSITION

ON NON-DISCRIMINATION IN THESE AND FUTURE NEGOTIATIONS ON
TNCS. U.S. DEL SHOULD FORMALLY REVISE PREAMBULAR PARA. 1

OF U.S. DRAFT RESOLUION TO INCLUDE "AND OTHER." THIS
SHOULD NOT POSE PROBLEM GIVEN THAT EGYPTIAN AND IRAN/LIBYA
COMPROMISE RESOLUTIONS HANDLE THIS ISSUE IN THE SAME WAY.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: LOBBYING, UNGA RESOLUTIONS, MULTINATIONAL CORPORATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 25 OCT 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: CunninFX
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975STATE252910
Document Source: CORE
Document Unique ID: 00
Drafter: L/EB:SRBOND
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750371-0769
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19751019/aaaaaqqc.tel
Line Count: 131
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN L
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: CunninFX
Review Comment: n/a
Review Content Flags:
Review Date: 28 MAY 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <28 MAY 2003 by ShawDG>; APPROVED <06 OCT 2003 by CunninFX>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
06 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: 30TH UNGA, AGENDA ITEM 12 - TRANSNATIONAL CORPORATIONS
TAGS: EINV, PORG, US, UN
To: ALL POSTS
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006